

Lloyd R. Ambinder
James E. Murphy
Virginia & Ambinder, LLP
111 Broadway, Suite 1403
New York, New York 10006
Tel: (212) 943-9080
Fax: (212) 943-9082

Jeffrey K. Brown
Leeds Morelli & Brown, P.C.
One Old Country Road, Suite 347
Carle Place, NY 11514
Tel: (516) 873-9550
Fax: (516) 747-5024

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CASSANDRA GREENE and ELIZABETH GOFF,
individually and on behalf of all other persons
similarly situated who were employed by C.B.
HOLDING CORP. d/b/a CHARLIE BROWN'S
STEAKHOUSE; CHARLIE BROWN'S
ACQUISITION CORP.; CHARLIE BROWN'S OF
COMMACK, LLC; CHARLIE BROWN'S OF
HOLTSVILLE, LLC; and/or any other entities
affiliated with or controlled by C.B. HOLDING
CORP. d/b/a CHARLIE BROWN'S
STEAKHOUSE; CHARLIE BROWN'S
ACQUISITION CORP.; CHARLIE BROWN'S OF
COMMACK, LLC; CHARLIE BROWN'S OF
HOLTSVILLE, LLC,

Plaintiffs,

- against -

C.B. HOLDING CORP. d/b/a CHARLIE
BROWN'S STEAKHOUSE; CHARLIE BROWN'S
ACQUISITION CORP.; CHARLIE BROWN'S OF
COMMACK, LLC; CHARLIE BROWN'S OF
HOLTSVILLE, LLC; and/or any other entities
affiliated with or controlled by C.B. HOLDING
CORP. d/b/a CHARLIE BROWN'S
STEAKHOUSE; CHARLIE BROWN'S
ACQUISITION CORP.; CHARLIE BROWN'S OF
COMMACK, LLC; CHARLIE BROWN'S OF
HOLTSVILLE, LLC; and SAMUEL BORGESE,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 10 2010 ★

BROOKLYN OFFICE

10 1094

WEINSTEIN, J.

POLLAK, M.J.

Docket No.:

CLASS ACTION COMPLAINT

Non Jury Trial

Plaintiffs, by their attorneys, Virginia & Ambinder, LLP and Leeds, Morelli, & Brown, P.C, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as “FLSA”), 29 U.S.C. §§ 207 and 216(b), New York Labor Law § 190 *et seq.*, New York Labor Law § 633; 12 New York Codes, Rules, and Regulations (hereinafter referred to as “NYCRR”) § 142-2.2; and 12 NYCRR 142-2.4, to recover unpaid minimum wages and overtime and improperly withheld wages and tips owed to Plaintiffs and all similarly situated persons who are presently or were formerly employed by C.B. HOLDING CORP. d/b/a CHARLIE BROWN’S STEAKHOUSE; CHARLIE BROWN’S ACQUISITION CORP.; CHARLIE BROWN’S OF COMMACK, LLC; CHARLIE BROWN’S OF HOLTSVILLE, LLC;; (collectively hereinafter referred to as “Charlie Brown’s”), and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN’S STEAKHOUSE; CHARLIE BROWN’S ACQUISITION CORP.; CHARLIE BROWN’S OF COMMACK, LLC; CHARLIE BROWN’S OF HOLTSVILLE, LLC; and SAMUEL BORGESE, individually (hereinafter collectively referred to as “Defendants”).

2. Defendants operate a number of restaurants known as “Charlie Brown’s Steakhouse” throughout New York, New Jersey, and Pennsylvania.

3. Beginning in approximately February of 2004 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of improperly withholding overtime and minimum wages from its tipped employees, and engaging in illegal tip pooling arrangements with wrongfully withhold gratuities from individuals who earned them.

4. Beginning in approximately February of 2004 and, upon information and belief,

continuing through the present, Defendants have engaged in a policy and practice of paying its tipped employees a wage less than the minimum wage for non-tipped employees, without following the provisions of 29 U.S.C. § 203(m), which require that “all tips received by such employee[s] have been retained by the employee[s].”

5. Beginning in approximately February of 2004 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of routinely failing to pay its employees at a rate of time and one half their regular rate of pay for all hours worked over 40 in any given work week.

6. Under the direction of Defendants’ shareholder, corporate officer, and/or director, Samuel Borgese, Defendants instituted this practice of depriving their employees of the basic compensation for work performed as mandated by federal and state law.

7. Plaintiffs have initiated this action seeking for themselves, and on behalf of all similarly situated employees, all compensation, including minimum wages and overtime compensation, as well as improper deductions from wages, including tips, which they were deprived of, plus interest, damages, attorneys’ fees, and costs.

JURISDICTION

8. Jurisdiction of this Court is invoked pursuant to FLSA, 29 U.S.C. §216(b), and 28 U.S.C. §1331 and 1337. This court also has supplemental jurisdiction under 28 U.S.C. § 1367 of the claims brought under the New York Labor Law.

VENUE

9. Venue for this action in the Eastern District of New York under 28 U.S.C. § 1391 (b) is appropriate because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

THE PARTIES

10. Plaintiff Greene is an individual who formerly worked for Defendants as a waitress and bartender.

11. Plaintiff Goff is an individual who formerly worked for Defendants as a waitress.

12. Upon information and belief, Defendant C.B. HOLDING CORP. is a foreign corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

13. Upon information and belief, Defendant CHARLIE BROWN'S ACQUISITION CORP. is a foreign business corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

14. Upon information and belief, Defendant CHARLIE BROWN'S OF COMMACK, LLC. is a domestic limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

15. Upon information and belief, Defendant CHARLIE BROWN'S OF HOLTSVILLE, LLC. is a domestic limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1450 Route 22 West, Mountainside, New Jersey, and is engaged in the restaurant business.

16. Upon information and belief, Defendant SAMUEL BORGES is a resident of 1450 Route 22 West, Mountainside, New Jersey, and is, and at all relevant times was, an officer, director, president, vice president, and/or owner of Charlie Brown's.

CLASS ALLEGATIONS

17. This action is properly maintainable as a collective action pursuant to the Fair

Labor Standards Act, 29 U.S.C. § 216(b), and as a Class Action under Article 9 of the New York Civil Practice Law and Rules and Rule 23 of the Federal Rules of Civil Procedure.

18. This action is brought on behalf of Plaintiffs and a class consisting of similarly situated employees who performed work for Defendants as tipped employees.

19. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 500 employees. In addition, the names of all potential members of the putative class are not known.

20. The questions of law and fact common to the putative class predominate over any questions affecting only individual members.

21. The claims of the named Plaintiffs are typical of the claims of the putative class.

22. Plaintiffs and their counsel will fairly and adequately protect the interests of the putative class.

23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FACTS

24. Upon information and belief, beginning in or about 2004, the Defendants employed numerous individuals at various Charlie Brown's Steakhouse locations in New York, New Jersey, and Pennsylvania as wait staff, bus staff, bartenders, barbacks, and other occupations which "customarily and regularly receive tips" as that term is defined under 29 U.S.C. § 203(m) and the regulations and caselaw interpreting same.

25. Upon information and belief, under 29 U.S.C. § 201, *et seq.*, and the cases interpreting same, Charlie Brown's constitutes an "enterprise engaged in commerce."

26. Upon information and belief, while working for Defendants, Plaintiffs and the members of the putative class were regularly required to perform work for Defendants, without

receiving proper minimum wages and overtime compensation as required by applicable federal and state law.

27. Upon information and belief, Plaintiffs and all members of the putative class constituted “employees” as that term is defined in Article 6 of the New York Labor Law.

28. The payments made to Plaintiffs and other members of the putative class by Defendants, and gratuities received by Plaintiffs and other members of the putative class, constitute “wages” as that term is defined under Article 6 of the New York Labor Law.

29. Upon information and belief, Defendants engaged in a regular pattern and practice of making deductions from the earned wages of Plaintiffs and other members of the putative class for reasons other than those allowed under New York Labor Law § 193, in violation of said section. These deductions *include but are not limited to* taking of tipped employees’ earned tips by management employees in violation of New York Labor Law § 196-d and 29 U.S.C. § 203; withholding of tipped employees’ wages for improper purposes such as “liquor shortages” or breakage, and other improper deductions.

30. Upon information and belief, while working for Defendants, Plaintiffs and the members of the putative class did not receive all earned overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty hours in any given week.

31. Upon information and belief, Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the Fair Labor Standards Act and applicable State law by failing to maintain proper and complete timesheets or payroll records, and, upon information and belief, by falsifying employees’ time records to reflect fewer hours than were actually worked.

32. Upon information and belief, Defendant Samuel Borgese was an officer, director, shareholder, and / or president or vice president of Charlie Brown’s, and (i) had the power to hire

and fire employees for those entities; (ii) supervised and controlled employee work schedules or conditions of employment for those entities; (iii) determined the rate and method of payment for Defendants' employees; and (iv) maintained employment records for Charlie Brown's.

33. Upon information and belief, Defendant Samuel Borgese dominated the day-to-day operating decisions of Charlie Brown's, made major personnel decisions for Charlie Brown's, and had complete control of the alleged activities of Charlie Brown's which give rise to the claims brought herein.

34. Upon information and belief, Defendant Samuel Borgese was a supervisor, officer and/or agent of Charlie Brown's, who acted directly or indirectly in the interest of Charlie Brown's, and is an employer within the meaning of the Fair Labor Standards Act. Samuel Borgese, in his capacity as an officer, director, shareholder, and / or president or vice president, actively participated in the unlawful method of payment for Charlie Brown's employees.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
FLSA MINIMUM WAGE COMPENSATION**

35. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 34 hereof.

36. Pursuant to 29 U.S.C. § 206, "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than— (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and (C) \$7.25 an hour, beginning 24 months after that 60th day."

37. Further, pursuant to 29 U.S.C. § 203(d), an "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes

a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.”

38. Plaintiffs and other members of the putative class are employees, within the meaning contemplated in Fair Labor Standards Act (“FLSA”), 29 U.S.C. §203(e).

39. Charlie Brown’s constitutes an employer within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

40. Pursuant to 29 U.S.C. § 203(d) and the cases interpreting the same, Samuel Borgese constitutes as an “employer” for the purpose of FLSA and, consequently, is liable for violations of FLSA.

41. Upon information and belief, Defendants failed to pay Plaintiffs and other members of the putative class all earned minimum wages for all of the time they worked for Defendants in any given week.

42. Pursuant to 29 U.S.C. § 203(m), a “tip credit” against the minimum wage may only be taken against the minimum wage where “all tips received by such employee have been retained by the employee, except [for] the pooling of tips among employees who customarily and regularly receive tips.”

43. Upon information and belief, Defendants did not pay all tips received by its tipped employees to those employees and others working in occupations which “customarily and regularly receive tips,” and improperly retained tips and gratuities for management personnel and restaurant expenses.

44. Upon information and belief, Defendants illegally claimed a tip credit against the minimum wage for its tipped employees, when such a credit was not legally permissible.

45. The failure of Defendants to pay Plaintiffs and other members of the putative class their rightfully owed wages was willful.

46. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the putative class in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FLSA OVERTIME COMPENSATION**

47. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 45 hereof.

48. Pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

49. Further, pursuant to 29 U.S.C. § 203(d), an "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

50. Plaintiffs and other members of the putative class are employees, within the meaning contemplated in Fair Labor Standards Act ("FLSA"), 29 U.S.C. §203(e).

51. Charlie Brown's constitutes an employer within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

52. Pursuant to 29 U.S.C. § 203(d) and the cases interpreting the same, Samuel Borgese constitutes as an "employer" for the purpose of FLSA and, consequently, is liable for violations of FLSA.

53. Upon information and belief, Defendants failed to pay Plaintiffs and other members of the putative class all earned overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty hours in any given week.

54. The failure of Defendants to pay Plaintiffs and other members of the putative class their rightfully owed wages and overtime compensation was willful.

55. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the putative class in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

**THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO PAY MINIMUM WAGES**

56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 559 hereof.

57. Pursuant to the Article Six and Article Nineteen of the New York Labor Law, workers, such as Plaintiffs and other members of the putative class, are protected from wage underpayments and improper employment practices.

58. Pursuant to Labor Law § 651, the term "employee" means "any individual employed or permitted to work by an employer in any occupation."

59. As persons employed for hire by Defendants, Plaintiffs and other members of the putative class are "employees," as understood in Labor Law § 651.

60. Pursuant to Labor Law § 651, the term "employer" includes any "any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer."

61. As an entity that hired the Plaintiffs and other members of the putative class,

Charlie Brown's constitutes an "employer."

62. Upon information and belief, pursuant to New York Labor Law §§ 190 *et seq*, 650 *et seq* and the cases interpreting same, Samuel Borgese is an "employer."

63. In failing to pay Plaintiffs and other members of the putative class proper wages and for time worked after forty hours in one week, Defendants violated Labor Law § 650, *et seq*, by failing to pay Plaintiffs and other members of the putative class minimum wages for all hours worked.

64. Upon information and belief, Defendants' failure to pay Plaintiffs and other members of the putative class minimum wages was willful.

65. By the foregoing reasons, Defendants have violated New York Labor Law § 650 *et seq*. and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New York in an amount to be determined at trial, interest, attorneys' fees and costs.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK OVERTIME COMPENSATION LAW**

66. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 65 hereof.

67. 12 NYCRR §142-2.2 requires that "[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate."

68. New York Labor Law § 663, provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

69. Upon information and belief, Plaintiffs and other members of the putative class at

times worked more than forty hours a week while working for Defendants.

70. Upon information and belief, Plaintiffs and other members of the putative class did not receive the New York statutory minimum wages or overtime compensation for all hours worked after the first forty hours of work in a week.

71. Consequently, by failing to pay to Plaintiffs and other members of the putative class the minimum wages and overtime compensation for work he performed after the first forty hours worked in a week, Defendants violated New York Labor Law § 663 and 12 NYCRR § 142-2.2.

72. Defendants' failure to pay wages and overtime compensation for work performed by Plaintiffs after the first forty hours worked in a week was willful.

73. By the foregoing reasons, Defendants have violated New York Labor Law § 663 and 12 NYCRR § 142-2.2 and are liable to Plaintiffs who performed work for Defendants within the State of New York in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**FIFTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK LABOR LAW ARTICLE 6**

74. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 73 hereof.

75. Gratuities provided by Defendants' patrons to Plaintiffs and other members of the putative class constitute "wages" as that term is defined under Article 6 of the New York Labor Law, specifically including but not limited to Labor Law §§ 193, 196-d, 198(3).

76. Pursuant to New York Labor Law § 196-d, "No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or

of any charge purported to be a gratuity for an employee.”

77. By improperly withholding portions of gratuities provided to Plaintiffs and other members of the putative class, Defendants violated New York Labor Law § 196-d.

78. By improperly charging Plaintiffs and other members of the putative class for surcharges and fees *including but not limited to* “liquor shortages,” breakage, and other improper deductions, Defendants violated New York Labor Law § 193 by making improper deductions from the wages of Plaintiffs and other members of the putative class for reasons other than those allowed under Labor Law § 193.

79. Upon information and belief, Defendants’ improper withholding of wages and gratuities earned by Plaintiffs and other members of the putative class was willful.

80. By the foregoing reasons, Defendants have violated New York Labor Law § 190 *et seq.* and are liable to Plaintiffs and other members of the putative class who performed work for Defendants within the State of New York in an amount to be determined at trial, plus interest, attorneys’ fees, and costs.

WHEREFORE, Plaintiffs, individually and on behalf of all other persons similarly situated who were employed by C.B. HOLDING CORP. d/b/a CHARLIE BROWN’S STEAKHOUSE; CHARLIE BROWN’S ACQUISITION CORP.; CHARLIE BROWN’S OF COMMACK, LLC; CHARLIE BROWN’S OF HOLTSVILLE, LLC; and/or any other entities affiliated with or controlled by C.B. HOLDING CORP. d/b/a CHARLIE BROWN’S STEAKHOUSE; CHARLIE BROWN’S ACQUISITION CORP.; CHARLIE BROWN’S OF COMMACK, LLC; CHARLIE BROWN’S OF HOLTSVILLE, LLC demand judgment:

(1) on their first cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys’ fees and costs,

(2) on their second cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs;

(3) on their third cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;

(4) on their fourth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;

(5) on their fifth cause of action against Defendants, in an amount to be determined at trial, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections; and

(6) whatever other and further relief the Court may deem appropriate.

Dated: New York, New York
March 10, 2010

By:



Lloyd R. Ambinder
James E. Murphy
Virginia & Ambinder, LLP
111 Broadway, Suite 1403
New York, New York 10006
Lambinder@vandallp.com
Tel: (212) 943-9080
Fax: (212) 943-9082

and

Jeffrey K. Brown
Leeds, Morelli, and Brown, PC
One Old Country Road - Suite 347
Carle Place, NY 11514-1851
Tel: (516) 873-9550

Attorneys for Plaintiffs and Putative Class